



POLICE DEPARTMENT

December 7, 2012

MEMORANDUM FOR: Police Commissioner

Re: Detective George Weir  
Tax Registry No. 944206  
48 Precinct Detective Squad  
Disciplinary Case No. 2010-0360

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The above-named member of the Department appeared before me on July 17, 2012 and August 15, 2012, charged with the following:

1. Said Detective George Weir, assigned to the 44 Precinct, while on duty, at or about 1000 hours, on January 8, 2009, [REDACTED] [REDACTED] did abuse his authority as a Member of the New York City Police Department in that said Detective did use force against Person A, in that said Detective struck Person A on the head with an ASP without police necessity.

P.G. 208-03 FORCE

The Department was represented by MaryLynne Frey, Esq., Department Advocate's Office, and Respondent was represented by Peter Brill, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF THE EVIDENCE PRESENTEDThe Department's Case

The Department provided Person A's out-of-court statements. In addition, it called Police Officer Tyric Clyburn and Detective Carlos Mena as witnesses.

Person A's Out-of-Court Statements

Department's Exhibit (DX) 2 is the transcript of an interview that was conducted by the Civilian Complaint Review Board (CCRB) on February 19, 2009 with complainant Person A. Person A recounted the events that led to his arrest on January 8, 2009. Person A was driving when he saw a marked patrol car in his rear view mirror. The patrol car had two uniformed officers inside. Person A did not hear any sirens or see flashing lights coming from the patrol car. The patrol car pulled up next to him and one of the officers told him to pull over. Person A stopped the car because "the road ran out." He pulled into a bus stop and the patrol car pulled up next to him on the driver's side.

Person A characterized the two officers as "the black officer" and "the white officer." He described the black officer as having short hair with no facial hair. Person A described the officer as a "big guy," and estimated the officer was about 40 years old and 250-280 pounds. He described the white officer as being clean cut, 5'10" tall, around 30 years old, weighing 170-180 pounds, with blondish hair.

Person A explained that the black officer walked around from the driver's side of the patrol car to the driver's side of his vehicle, while the white officer went to the passenger side of his vehicle. Person A claimed the officers did not tell him why he was

pulled over. The officers told Person A to get out of the car and give them the keys. Person A turned the car off and gave the officers the keys. The white officer allegedly said “We should mace him,” and the other officer allegedly responded, “Nah we should just fuck him up.” Person A then decided to get out of the car.

Person A acknowledged that the car he was driving was stolen and he did not know who the car belonged to. Person A stated that he got the car “from his friend in the hood.” Person A felt the officer should have looked at his license and registration first. Though Person A had his license and a permit, he admitted he did not have the car’s registration.

Person A exited the car on the driver’s side and stood in between the stolen vehicle and the patrol car. Person A put his hands in the air and turned around to wait for instructions. The black officer ordered him to get on the floor face down. He did not get on the ground; instead he put his hands up behind his head. Person A asked the officer why he needed to get on the ground. The officer did not respond, he just told him to “get on the fucking floor.” The officer asked Person A to get on the floor three or four times, and Person A continued to ask why. Person A explained that he questioned the officer because, at the time, he did not know the vehicle was stolen. He recalled that the officer had nothing in his hands at this time.

According to Person A, the white officer came around to the driver’s side of the car. Person A continued to question why he needed to get on the floor. The white officer allegedly stated, “We should just mace him,” but did not have his mace out. Person A moved backward toward the back end of the patrol car, because he was scared of “being hit with mace.” The officers followed him as he moved. Eventually Person A followed orders and got on the ground on his own. He turned around and got on his knees near the

driver's side of the patrol car. Person A claimed he "triggered the officer off with something" because he felt and heard a hit on his head. At the time his face was down on the ground.

Person A stated after the first hit he turned around to face the officers. The black officer continued to hit him saying, "Get on your knees." Person A who was at arms length from the officer, asked why he was hit. He knew it was this officer that hit him, because when he got up and looked around, "he was the one standing with a black stick." Person A described the stick as a flexible metal stick that contracted so the officer could extend it to make it bigger. He estimated the stick was about six inches long, and that it extended to a foot-and a-half long. Person A did not see anything in the white officer's hands. Person A later stated, that he was hit a total of more than ten times and all hits were to his head.

Person A explained that he bled a lot after the altercation. Blood was on his face and clothes. He thought the black officer's strikes caused the bleeding. Person A stated that it would have been better if the officers maced or tazed him because he "did not do anything wrong."

Person A explained that up to this point, he and the officers were on Shakespeare Avenue. After the hits, Person A stated he decided to run from the officers. He turned left and ran a block down 169 Street and turned left onto Nelson Avenue a street parallel to Shakespeare Avenue. He went into a brand new building with cameras on the right side of the block.

Person A stated that he was familiar with the building because he lives in that neighborhood and has walked by it a couple of times. He explained that his house is "up

the hill" from the building. The front doors to the building were unlocked. He went into a vestibule and there was a second set of doors. The second doors were locked, but Person A was able to pull one open. He did not know if the lock was broken.

Person A proceeded into the lobby and ran up to the second floor. Other officers that responded to the scene followed "right behind" him. Person A stated that two uniformed officers followed him up the stairs. He also described these officers as "one white guy and one black guy." Person A stated that the white officer arrived first and was "on the radio crying," but he did not know what the officer said; just that he was giving directions to someone.

Person A reached the hallway of the second floor and surrendered by lying down. Person A stated he was cuffed then "beat down" by the black officer. He said the officer punched him in the face and kept punching him. He estimated that he was punched five times. Person A stated that he could not get off of the ground. The officers cuffed him as he lay on the floor. Person A estimated that the black officer who cuffed him was 30 or 40 years old, with short hair. He did not think he was that tall, guessing the officer's height was similar to his own height of 5'9". Person A estimated that ten officers were present surrounding him at the end of the altercation.

Person A stated that once the officers handcuffed him, they ordered him to stand up. Person A refused because he was "too weak and bleeding." Person A stated, "The white guy" dragged him by his feet to the staircase. He clarified that the officer that dragged him, was the same officer who was on the radio earlier. Person A described this officer as an older guy, about 45 years old, with gray hair and estimated he weighed 170-180 pounds and was 6'2" or 6'3" tall.

Once they reached the staircase the other officers tried to help Person A stand up. The officers picked him up underneath his armpits and lifted him to help him walk him down the stairs. When they reached the first floor the officers took Person A outside and placed him in the back of a marked patrol car that was parked in front of the building along with several other marked cars.

Person A stated that he was taken to the precinct. He thought that he should have been taken to the hospital. An ambulance later came to the precinct. When the ambulance arrived, Person A was on the precinct floor in front of a desk. He explained that he was on the floor because he was weak from losing a lot of blood. EMS put Person A into the ambulance with two uniformed officers that Person A had not seen before, and took him to [REDACTED] Hospital.

Person A was diagnosed with two lacerations on his head, one on each side. Both sides of his head were stapled, with 11 staples on the left side and 3 staples on the right side. He believed these injuries were sustained when he was hit with the ASP by one of the officers who pulled him over. His CAT and CT scans came back normal and he had no broken bones. He was discharged from the hospital the same day. When he was released he was brought back to the precinct.

Person A was then shown several pictures of officers with numbers for identification. He could not definitively identify anyone in the pictures and wrote "no ID" on the pages with his signature. Person A stated that he thought he did not recognize any of the officers because of "the beat down he caught." Person A admitted that some officers looked familiar, but he was not positive that he had seen them before.

DX 3 is in the transcript of a CCRB interview that was conducted on February 25, 2009. In the interview, Person A stated that on January 8, 2009 at approximately 10:00 a.m. [REDACTED], he was pulled over by the NYPD. He recounted that he was pulled over at the number 11 bus stop and made a right turn toward Shakespeare Avenue and 169 Street. Person A explained the events occurred in the same way as he did in his CCRB interview conducted on February 19, 2009. However, he added or changed the statements made in the February 19 interview as follows:

Person A described the vehicle he drove that day as a red, two door Dodge. The officers told Person A the car was stolen, though he reiterated that he did not know it was. He responded that it was not his “f-ing vehicle” during the interview.

When Person A exited the car, the officers told him to get to the floor. He claimed a “left foot popped him in the head,” but then trailed off and did not explain the statement. The first time he was hit with the “stick,” he was hit in the front of the head. Person A claimed that the officer hit him while he stood with his hands up. He tried to get on the floor “after a couple of whacks.” He was hit three or four times before he got to the ground and an additional one or two times while he was on the ground. Person A explained that the hits he received while standing were on the left side of his head and caused the large laceration. The hits he received on the right side of his head occurred when he was on the ground and caused the small laceration. The officers did not try to handcuff Person A during this altercation. Person A added that the black officer who pulled him over “had some height on him,” and changed his description of the white officer slightly, stating he weighed a heavier 190-200 pounds.

Person A stated he ran away from the officers for safety and because he was scared. As he ran, the white officer was on the radio, "He went east, he went north, and he went west." Person A ran into a building with cameras on the side. Person A wanted to surrender when he ran into the building. When he went upstairs, he "just dropped to the ground," because he was tired and weak. He clarified that the officers who followed him into the building and up the stairs were different than the officers that pulled him over. He stated that there were a couple of people in the building besides the officers at the time of the incident. He saw one person as he ran in.

Person A claimed that when he was handcuffed a black officer punched him in the face. Person A clarified that this officer was different from the officer who pulled him over. Person A added to his previous description of the officer estimating he weighed 190 pounds. He estimated that he was punched six or seven times by the officer. Person A explained that he was punched on his face, specifically on his eyes and nose. He stated that he had the injury of "a little something on his nose."

Person A stated that as he was handcuffed, "like a million cops surrounded him." He admitted that he resisted as he was handcuffed. The officers asked Person A to stand up, but he stated that he could not because he lost a lot of blood and was weak from the altercation. Person A explained that when the officer dragged his body, the officer grabbed him by the belt and said, "Get up, get up, and get upstairs." Person A responded by stating that he was too weak and he could not get up. He then recounted how the officers helped him down the stairs.

Person A wore blue jeans and a red, white and blue shirt that day. He explained that his shirt and pants were ripped by the officers as he was pulled up. He did not have

underwear on, and while he was running and when his pants ripped it was embarrassing because he was showing his buttocks. Some of his clothes ended up on the floor when he was arrested and he still had to go pick them up because they were in evidence.

When Person A was put into the squad car, he was bloody and a female took a picture of him on a cell phone. He did not specify whether this female was an officer. Person A stated that initially, the squad car was going to take him to the hospital, but instead he was taken to the precinct.

Upon arrival at the precinct, the officers wanted Person A to stand up, but he was too weak. He said "they made him" stand up and when he tried he fell in front of a desk. An officer with a white shirt on recommended that he go to a hospital. That officer allegedly stated, "Take this kid to the hospital he is bleeding too much." Person A stated that he "sat in front of the desk for awhile" before the ambulance was called to take him to [REDACTED] Hospital.

Person A stated that he was charged with assault on a police officer, unauthorized use of a vehicle and resisting arrest. He claimed that he never hit an officer during the incident. Person A retained an attorney. The judge saw Person A's injuries and was going to let him go, but decided to set bail. Person A had no money, and spoke to his brother. He explained that he decided "just to cop out just to get out" of having to do jail time. He thought he received the assault charge because the district attorney was trying to protect the police officers who hit him.

Person A wanted the case investigated and the truth to get out because the officers lied in court. The officers said he tried to grab one of their guns and he claimed that he did not. He stated that he is "not that kind of guy," and that he had no priors on his

record. However, Person A admitted he was on probation because of a drug problem. Person A stated that he was not a violent or angry guy. He just wanted to comply with probation and get it over with. Person A claimed that at the time of the interview, he was looking for a job. He still felt pain in his head and did not get a haircut because he was waiting for the scars to heal. A week prior to the interview, his son hit him in the head with a toy and he felt like crying because of the pain. Person A expressed that he wanted to move on with his life.

DX 4 consists of the audio recordings of Person A's two CCRB interviews.

DX 1 consists of medical records, dated March 12, 2009. They indicate that Person A went to the hospital on the day of his arrest for two lacerations on his head. He received 11 staples to a laceration on the left side of his scalp and 3 staples to a laceration on the right side.

Respondent's Exhibit (RX) A is the transcript of a CCRB interview of Dr. Goldfeder, the Deputy Chief Medical Examiner, who had the opportunity to review Person A's medical records. Goldfeder stated in the interview that while an ASP strike would produce a "nice defined linear laceration," Person A's longer laceration had a "little tail going off to the side." While it was possible that an ASP strike caused Person A's injuries, they could have also been caused by Person A hitting his head on the ground during the course of the scuffle, especially if there was something sharp on the ground.

RX B is an outline of [REDACTED]'s criminal record. It shows that between 2006 and 2009 he was convicted of Unauthorized Use of a Vehicle on two occasions, one of which was a felony. During that same period, he was also convicted twice of Petit Larceny and once of Attempted Petit Larceny.

Police Officer Tyric Clyburn

Clyburn, a seven-year member of the Department, is currently assigned to the 44 Precinct's Street Narcotics Enforcement Unit (SNEU). Clyburn testified that around 10:00 a.m. on January 8, 2009, he was on SNEU duty with his partner, Detective Carlos Mena. The two officers, in uniform, worked the "catch car" for narcotics enforcement apprehensions when they heard Respondent transmit a "10-85" call for assistance. Clyburn and Mena responded to the call because they were approximately five blocks from Respondent's location [REDACTED]

Clyburn stated that he drove with Mena to [REDACTED]. When they arrived, Clyburn saw Respondent give chase to a suspect. He and Mena exited the car. They encountered Respondent, who pointed and stated that the suspect went into the nearby building and ran up the stairs. Clyburn then saw the suspect, Person A, running up the stairs. Clyburn and Mena subsequently went into the building after Person A and proceeded to chase him to the second floor.

Clyburn said that Mena stopped Person A on the second floor landing, but he did not recall the exact nature of Mena's initial physical contact with Person A. He testified that he and Mena got into a brief struggle with Person A. Clyburn explained that he grabbed Person A in an attempt to arrest him. Clyburn was able to see Person A's face at this time, and noticed blood dripping down the side. He assumed the blood came from Person A's head, but acknowledged that he did not see the originating injury.

According to Clyburn, he was able to handcuff one of Person A's hands, but Person A violently resisted. A struggle ensued that caused them both to fall to the floor. Clyburn estimated that he and

Mena fought Person A for two to three more minutes, but they were unable to handcuff his other hand.

Fellow officers then responded and helped handcuff Person A's other hand.

Clyburn did not see any of these other officers use their ASP on Person A, throw him into the stairwell or hit him on the head. He did not observe Person A fall into anything that could have caused him to bleed more. Once Person A was handcuffed, Clyburn had no further interaction with him. Clyburn then left the scene to go to the hospital.

Clyburn testified that during the entire incident, he did not see Mena use any physical force that would have caused Person A to collide with anything. According to Clyburn, neither he nor Mena used their ASP on Person A during the altercation. He claimed that during the struggle he could not use his ASP on Person A. He explained that if he had tried to use his ASP, he would have risked hitting Mena because of their close proximity. He explained that even if he had space to use his ASP, he would not have used it to strike Person A in the head, because the Police Academy trains officers not to use their ASP in that manner. Clyburn was "not sure of any circumstances" in which an officer could use an ASP to strike someone in the head. Clyburn acknowledged that although the struggle with Person A was violent, he did not feel that his life was threatened. He did not recall if he saw any glass on the floor or broken windows while he chased Person A. He did not see anything in Person A's hands when they met at the top of the stairwell. Clyburn estimated that the encounter lasted five minutes in its entirety.

During cross-examination, Clyburn stated that during his time on the force he has encountered other suspects who bled from the head, but none as a result of an ASP hit. Clyburn conceded that when he arrived at the scene, he saw Person A go into the building.

and he then lost sight of him. He stated that when he entered the building, he followed Mena up the stairs. He could not see Person A, but he assumed Mena went up the stairs in pursuit of him. Clyburn expressed that the struggle on the second floor landing was "very scary." Clyburn repeatedly asked Person A to "stop resisting." He explained that Person A flailed his arms and swung at him, so Clyburn swung back to try and gain control. He did not recall the size of the second floor landing just that he remembered "the two walls we were bouncing off of." Once he had one of Person A's hands cuffed, Mena tried to help him with the other one.

Clyburn explained that he and Person A subsequently fell to the ground and rolled around, while Clyburn still tried to handcuff Person A's other hand. He did not recall if he was on top of Person A at any point during the altercation. He stated that Person A was "flailing his arms while throwing punches," and one hit Clyburn's body. Clyburn did not recall retaining a strike to his head at any time. He did not know what Mena did during the struggle.

When the other officers responded, Clyburn was finally able to handcuff Person A. Clyburn estimated that "probably more than ten" officers responded. Once Person A was secured, he stated that he walked downstairs and left Person A with the other officers. Clyburn did not know if Person A continued to resist the other officers after he was handcuffed.

Clyburn added, "[Person A] wasn't bleeding profusely, it was a little bit of blood on the side of his face." Clyburn did not bleed after the struggle, nor did he recall if Mena bled. Clyburn did not notice any of Person A's blood on his person or on the floor.

During redirect examination, Clyburn stated that he did not notice any blood on the first floor as he left the scene. He estimated that 45 seconds to a minute passed from the time that Respondent pointed to Person A, to the time of his own physical contact with Person A. Clyburn did not recall if Person A hit his head on the ground when they fell. He clarified that another officer helped put the second handcuff on Person A.

During recross-examination, Clyburn acknowledged that it was possible that Person A hit his head against something during the struggle.

Upon questioning by the Court, Clyburn admitted that he punched Person A while trying to handcuff him. He did not recall hitting Person A in the head. Clyburn stated that after the incident he sought medical treatment for his wrist, back and neck. Clyburn did not recall Person A's physical size. He did not recall if Mena threw punches at the time. Clyburn did not notice if Person A's bleeding became worse after their altercation.

Clyburn did not think he became the arresting officer on the case. Person A left the scene in his set of hand cuffs. Clyburn had another set of handcuffs on him, due to the nature of his work with SNEU.

Detective Carlos Mena

Mena, a 14 year member of the Department, is currently assigned to the 48 Precinct Detective Squad. He testified that while assigned to the 44 Precinct's SNEU team on January 8, 2009, he and Clyburn responded to Respondent's location. Upon arrival, he "came towards the wrong way" on a one-way street where Respondent had parked his vehicle. Mena explained that Respondent's car faced the only building on the block and its doors were open. Mena and Clyburn exited the vehicle and Mena

immediately ran into the building ahead of Clyburn. He did not recall if someone held the door open for them.

Once inside the building lobby, Mena looked around and observed Respondent run toward the right. Respondent opened the staircase door and held it open. Respondent held his chest and was out of breath, unable to speak. He ran toward Respondent and asked where the suspect went. Respondent pointed upstairs, and Mena ran up the stairs with Clyburn behind him. Mena saw Person A as he ran up the stairs. Mena stated that Person A was "covered in blood." It looked like Person A had head injuries because the blood trickled down his face, but Mena did not know where the blood originated.

Mena testified that when they reached the second floor landing, he ran up to Person A closed the door on Mena and Mena opened it. Person A continued to run and since they were in a narrow hallway Mena could not pass him. At this time, Clyburn was directly behind Mena. Mena did not want to touch Person A because of the blood. Instead of grabbing Person A, Mena tripped him from the back to stop him. Person A dropped to the ground and Mena got in front of him to block his forward movement, but Person A stood back up. Mena stated that Person A was "flailing his arms" and it looked like he wanted to fight and a struggle ensued.

Mena indicated that when the struggle started, Clyburn was behind Person A. Clyburn grabbed Person A and the two started to fight. He confirmed that he could see Clyburn at all times. He explained that during the struggle he had his radio in hand. Mena relayed his location over the radio. When other officers arrived, they handcuffed Person A and escorted him downstairs. Mena did not remember how Person A was

handcuffed or who handcuffed him. He did not see Person A engage in any physical altercations with the police officers after he was handcuffed.

Mena stated that he did not see Person A fall down or "bang" his head into anything during the incident. Mena did not physically "bang" Person A's head into anything. He reasserted that he did not want to touch Person A because he feared that Person A's blood would get on him. Mena did not recall if he saw any blood or broken glass on the first floor. Nothing was on the staircase to block his way as he ran up the stairs.

Mena stated that both he and Clyburn had their ASPs on them that day, but neither used them. He explained that he did not use his ASP because the hallway was narrow, and he could not extend it without swinging it. Additionally, even though he is trained in using his ASP, he prefers to apprehend a person by hand. Mena did not recall any of the other officers with their ASPs out. Mena did not see any of the officers use an ASP on Person A or hit his head into the ground. He expressed that he did not feel that his life was threatened at any time by Person A. He estimated that the entire encounter lasted between five and seven minutes.

During cross examination, Mena conceded that he had no knowledge of what occurred with Person A prior to the chase up the stairs. He admitted that he did not see Person A enter the building, so he did not know how long he had been inside. Mena acknowledged that he has no information as to whether Person A could have tripped and fallen on his way into the building.

Mena did not recall which side of Person A's face bled. He stated that at the end of the encounter he had a little bit of blood on his duty jacket. Mena clarified that after he

kicked Person A, he had no physical contact with him. He did not have any opportunity to inspect Person A more closely to see what type of injuries he had.

Mena clarified that when he kicked Person A, he fell “straight down.” He saw no obstacles in the way of Person A’s fall. Mena did not know if Person A hit his face on the floor. Mena reiterated that after Person A fell, he tried to stand up and swung his arms in an attempt to punch Clyburn. Clyburn and Person A subsequently ended up back on the ground, but Mena did not recall how it occurred. Mena stated that Clyburn hit Person A back a few times, but Person A did not hit his head on the ground. Mena felt that Clyburn “was pretty much handling the situation,” so he used the radio to call for backup and direct the responding officers to his location.

Mena did not recall exactly how much time elapsed between his radio relay of their location and the other officers’ arrival. He estimated that approximately a minute or two had passed. When the other officers arrived Person A was handcuffed, but he does not recall whether handcuffs were on only one hand or both hands. Mena did not recall if he escorted Person A down the stairs on his own or with other officers. They all went down the stairs at the same time. Mena indicated that when he jumped in the air to kick Person A, he fell to the ground and sprained his ankle. Mena acknowledged it would have been difficult for him to escort Person A down the stairs as a result of his injury. He conceded it is likely that other officers escorted Person A down the stairs. He had no further interaction with Person A because he went to the hospital after the incident.

Upon questioning by the Court, Mena testified that during Clyburn’s interaction with Person A “didn’t want to give up.” Mena stated that Person A came toward him when Clyburn grabbed Person A. Person A subsequently turned around and swung at

Clyburn, who Mena characterized as a "pretty big guy." He recalled that Clyburn and Person A swung at each other, and Clyburn "actually punched him a few times in the face." Mena remembered that Clyburn tried to handcuff Person A, but after that did not remember how the struggle ensued. He requested backup because Person A "was not giving up."

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Respondent's Case

Respondent called Police Officer Todd Campbell as a witness and testified in his own behalf.

Police Officer Todd Campbell

Campbell is currently assigned to the 44 Precinct. On January 8, 2009, Campbell and Respondent were assigned to robbery auto duty. He explained that officers on that duty respond to any robberies in progress and take incoming complaints of any past robberies. They were in a marked Department vehicle with Campbell as the driver and Respondent as the passenger.

Campbell testified that at approximately 10:00 a.m. on the date in question, the officers observed Person A driving a truck. He randomly ran the truck's license plate. The truck was reported stolen, so the officers performed a felony car stop. Person A was at a stop sign at 169 Street and Shakespeare Avenue. When Person A turned onto Shakespeare Avenue, the officers "called him over" at a bus stop.

The officers exited their vehicle, and Respondent verbally commanded Person A to turn off the vehicle and get out. Campbell approached the driver's side of Person A's vehicle. Campbell reported that at that point, he could see through Person A's windshield. He observed that Person A still had one hand on the steering wheel and one hand on the

steering column. He thought Person A's position indicated he "was either going to put it in drive or reverse to get away" from the scene, which caused Campbell to hesitate for a minute. Campbell then thought Person A would comply and exit through the driver's side door. Instead, Person A stopped and lunged toward the passenger's side door. At that point, Campbell went around to the passenger side of the truck. Campbell explained that he wanted to make contact with Person A as he tried to exit the vehicle.

Respondent gave verbal commands at the driver door of the truck.

A struggle ensued. Campbell tried to get Person A out on the passenger side, while Respondent tried to get him out on the driver's side. He explained that he had Person A by the shirt and Respondent had him by the jeans. The officers unknowingly engaged in a "tug-of-war" with Person A, because they pulled him in both directions. Campbell and Respondent realized that they were "playing against each other." Eventually Person A started to fall out of the truck in Campbell's direction. As Person A flailed, he placed his hand on Campbell's firearm. Campbell felt a rocking forward motion and thought Person A was trying to take his gun out of his holster. To retain weapon retention, Campbell put his right hand across the palm of the firearm while he kept his left hand on Person A's shirt. Person A ultimately fell out of the passenger side of the truck toward Campbell.

When Person A fell to the ground, Campbell got on top of him and attempted to handcuff him. Campbell did not take his hand off of his firearm. He did not recall the part of Person A's body that hit the ground when he fell. He was unable to handcuff Person A. Respondent came to assist, but Campbell did not recall if Respondent approached from the front or the back of the truck. Person A "popped up and started to

fight" and attempted to punch the officers. Campbell and Respondent gave Person A verbal commands to get down, stop resisting and stop fighting, but he did not comply.

Campbell testified that Respondent then gave Person A a verbal command two to three times indicating that he was going to hit him in the leg with the expandable ASP. Person A did not respond to these commands. He noted that Person A did not say one word through the whole struggle. Person A continued to swing at the officers, trying to hit them. Person A refused to "go down" or be placed under arrest. Respondent proceeded to use his expandable baton to hit Person A one time in a "45-degree angle in the meaty part of the thigh, just above the knee." Person A did not respond to the hit. Campbell explained that he lost his grip on Person A, who started to run.

Campbell and Respondent chased Person A to the next block. Campbell lost sight of Person A when he made a left-hand turn onto Nelson Avenue. He did not see Person A enter the building, but he saw other officers run into it, which led him to believe that Person A was inside. Campbell did not have any further contact with Person A. He was not the arresting officer on the case.

Based on his experience as a police officer, Campbell believed that Person A was under the influence of drugs during the encounter. He based his opinion on Person A's strength and manner of fighting. He explained that in his experience, Person A reacted similar to someone under the influence of PCP or angel dust. Campbell estimated that his encounter with Person A lasted five minutes and that their physical struggle lasted four minutes. The encounter left him "very exhausted, very winded, hard to catch my breath." Campbell did not notice any blood or signs of physical injury to Person A during their

interaction. He did not see Respondent use his ASP to strike Person A anywhere other than in the leg.

During cross-examination, Campbell acknowledged that his initial struggle with Person A lasted five minutes. Campbell stated that "maybe half a minute" elapsed from the time he gave chase to Person A to the time he turned the corner. He confirmed that the chase went from Shakespeare Avenue to Nelson Avenue, and he lost sight of Person A as he turned to go southbound on Nelson Avenue. He estimated that Person A was 50 yards ahead, and the chase lasted for half a block. Campbell did not recall if he actually saw Person A enter the building, but he reiterated that he saw other officers enter the building. He subsequently ran into the building. Campbell estimated that another minute or two passed before he regained sight of Person A in the building. He estimated that the entire incident lasted ten minutes.

Campbell agreed that during the struggle between Person A and Respondent, Respondent repeatedly warned Person A that he was going to use his ASP. Campbell did not recall if Respondent told Person A where he was going to hit him. Campbell recalled that Respondent only struck Person A with the ASP once. He explained that he was in the line of sight of Respondent and Person A during the entire struggle. While Campbell acknowledged that Person A moved around "quite a bit" during the struggle, he asserted that it was not possible for the ASP to have hit Person A on any other part of his body besides his leg. He clarified that he did not use his own ASP on Person A or have a reason to do so.

Campbell stated that when he arrived on the second floor of the building, he saw that Person A bled from the top of the head. He had not seen blood on Person A prior. He

acknowledged that as he chased Person A, he could only see the back of his head. He explained that when he arrived on the second floor, Person A was already handcuffed.

Campbell stated that the other officers were present and none had their ASP out.

Campbell did not recall any objects that were in his way as he went to the second floor.

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Campbell stated that the only time he saw Person A fall was when he fell out of the truck. He did not see Person A quickly move his head from side to side at any point. He did not recall exactly where Person A landed when he fell. Campbell asserted that he did not hit Person A's head against the ground during their struggle. Campbell did not see Person A hit his head either.

Campbell stated that Person A was ultimately treated by EMS, but he did not recall if it was at the station house or on the scene. He recalled that Person A had blood on his shirt. He recounted that Person A walked out of the building on his own ability and was conscious at the time. Person A did not speak to anyone as he left the building.

Upon questioning by the Court, Campbell stated that he did not see who placed Person A in handcuffs or how it was done. Campbell stated that there were "a few officers on the second floor," but he did not know exactly how many.

Respondent

Respondent, a 19-year member of the Department is currently assigned to the 48 Precinct Detective Squad. He testified that while assigned to the 44 Precinct on January 8, 2009, he and Campbell encountered Person A while conducting "plate checks." He explained that Campbell ran a red work truck that came back stolen. Person A made a U-turn on the block of West 169 Street. The officers turned on their lights and instructed

the vehicle to pull over. The vehicle pulled over inside a bus stop on 169 and Shakespeare Avenue, and the two officers exited their vehicle.

Respondent stated that he and Campbell walked up to the vehicle, and Respondent commanded Person A to show his license, registration and insurance card, but he did not respond. At this point, Respondent and Campbell were both positioned on the driver's side of the vehicle. He explained that he opened the driver's side door and repeated the command for Person A to produce his documents. Person A still did not speak, but he attempted to step out of the vehicle. Then Person A placed one foot out of the vehicle and "all of the sudden," he jumped back into the vehicle and tried to grab the gear shift. The vehicle was still running and Person A "tried to take off with the vehicle." However, Person A then put the vehicle in park and turned it off.

Person A tried to "dive across the driver's side" of the truck, and since it had a "bench seat" he was able to reach the passenger side. Campbell went to the passenger side of the truck to try and ensure that Person A did not get out. Respondent tried to place handcuffs on Person A from inside the vehicle, but he struggled. Person A started to kick toward him. At this point, Campbell opened the passenger side door to try and grab Person A. Campbell told Person A to "stop resisting, stop resisting." Person A was not compliant.

Respondent explained that he had a hold of Person A by the belt and pants. Respondent tried to pull Person A in his own direction, while Campbell tried to pull Person A in his direction. He then saw Person A grab Campbell's firearm and try to unclip it. Eventually he just let go of Person A and he fell out of the vehicle onto the ground. Respondent did not see how Person A fell.

Respondent then went to the passenger's side of the truck. He saw that Campbell and Person A were engaged in a brief struggle. He explained that Campbell attempted to cuff Person A, but Person A threw punches at him. Person A punched Campbell in the face and head. Respondent tried to grab Person A, but Person A turned around and punched him in the face, on the side of his eye. Respondent stated that a "shot for shot" street brawl ensued. He explained that Person A tried to punch him, while he and Campbell tried to deflect the punches. Person A stood up, and at that time Respondent gave him the verbal command to "stop resisting and just put your hands behind your back." Person A still did not speak, but still was "throwing haymaker punches."

Respondent stated that he then took out his ASP, and told Person A, "If you don't stop resisting, I'm gonna hit you with the ASP." Respondent recounted that he gave numerous commands that warned Person A of the coming ASP strike. Since Person A continued to throw punches, Respondent stated that he hit Person A on the ankle and both sides of his legs with the ASP. Respondent stated that the hits landed just above Person A's knee. Specifically, Respondent recounted that he hit Person A at a 45-degree angle from his right side, and then he swung the ASP and hit him again from the left side, then swung it back to the right. Person A still gave no verbal response to the hits.

Subsequently, Respondent and Campbell were able to get Person A to the ground, but Person A jumped back up and ran up West 169 Street. When Person A stated to run, he used his radio to call a 10-85 for assistance. Respondent then put his ASP back in its holster.

Respondent and Campbell "were winded" from the struggle. When Clyburn and Mena arrived at the scene, Respondent pointed them in Person A's direction. Clyburn and

Mena proceeded to chase Person A toward the building [REDACTED].

Respondent saw Person A run into the building and the other officers followed.

Respondent also saw other vehicles approach the building and officers run toward the building.

Respondent estimated that he did not go into the building until four minutes after the other officers. He explained that he was winded, and due to chest pain he could not run any more. When Respondent went into the building, the other officers had handcuffed Person A. Respondent then saw the officers escort Person A out of the building and place him into their vehicle. Respondent had no further contact with Person A.

Respondent did not think Person A sustained injuries during their struggle. He acknowledged that it was possible Person A sustained injuries from the fall out of the truck, because he drove a "work truck" that was "a little higher than a regular vehicle." Respondent did not see if Person A bled during their struggle. He admitted that he did not know if Person A was injured during his struggle with other officers. Respondent required medical treatment for chest pain. As a result of the investigation, the Department examined Respondent's ASP, and the test produced a negative result.

During cross-examination, Respondent conceded that the Department did not take his ASP for examination on the date of the incident; instead they took it at a later date. He reiterated that he did not see any blood on Person A until after his interaction with the other officers. Respondent acknowledged that Person A could have sustained injuries during those subsequent interactions. He stated that during their struggle with Person A, neither he nor Campbell had any blood on their person.

Respondent estimated that he chased [REDACTED] for less than a minute, before Person A turned the corner and ran into the building. He clarified that he was a block away from Nelson Avenue when he pointed Mena toward Person A. He also clarified that the four minute period during which he did not have sight of Person A lasted from when he saw Person A enter the building to when he saw him cuffed with the other officers.

Respondent did not know if any other officer had their ASP out that day. He did not recall seeing another officer with their ASP out. The first time he saw blood on Person A's shirt was when he was with the other officers in handcuffs. The blood was on the front of Person A's shirt when he walked out of the building. He did not see any blood on Person A's head. Respondent estimated that ten minutes passed from the time he stopped Person A until the time Person A was handcuffed.

Respondent explained that he struck Person A with the ASP in the knees because, Person A was standing and Respondent wanted to "bring him down to the floor." Respondent did not think it was possible that he struck Person A more or less than three times. He reiterated that he did not hit Person A anywhere other than the leg. Respondent stated that at the time he struck Person A with the ASP, he felt his life was in imminent danger. He explained that he and Campbell were "big guys," but Person A had "some kind of like super strength" that overpowered them. Respondent clarified that he feared not only for his safety, but for his life.

Respondent stated that when Person A tried to take Campbell's gun, he became fearful that Person A could kill both officers. Respondent stated that when the struggle moved from the car to the ground, Campbell had retention over his gun but Person A still had a chance to take it. Respondent acknowledged that while an officer is struggling with

a suspect, the suspect can always reach for the officer's weapon. Respondent acknowledged that Person A did not have a weapon, but stated, "I think mentally he was armed." Respondent also acknowledged that Person A was trying to get away from the officers during the struggle.

Upon questioning by the Court, Respondent estimated that there were ten to fifteen officers in the building, possibly more. He saw Clyburn and Mena when he arrived at the building. Respondent clarified that when he got to the second floor of the building, Person A was already handcuffed. Respondent reiterated that he did not recall seeing blood anywhere other than on Person A's shirt.

Upon recross examination, Respondent stated that Person A did not speak while the other officers escorted him out of the building. Person A was not trying to break free of being arrested. He did not see any other officers yell at or struggle with Person A. Respondent did not observe if any of the other officers sustained injuries. Respondent did not speak to any of the other officers.

#### FINDINGS AND ANALYSIS

Respondent stands charged herein in that while assigned to the 44 Precinct, while on duty at or about 1000 hours on January 8, 2009 [REDACTED]

[REDACTED] did abuse his authority as a member of the New York City Police Department in that said Detective did use force against Person A, in that said Detective struck Person A on the head with an ASP without police necessity.

The Assistant Department Advocate (Advocate) wants this Court to rely on the hearsay statement of Person A to find Respondent Guilty of this Specification. However,

absent corroboration, this result cannot be upheld. Evidence adduced at trial established that Person A was resisting being arrested when found in a stolen truck. A violent struggle to place him under arrest ensued between Respondent and his partner Campbell. Person A fell out of the truck to the ground during the struggle with Respondent and Campbell. Person A was able to flee that scene and encounter another set of officers, Clyburn and Mena who had an additional physical struggle with him. Clyburn testified that they bounced off of the walls in the hallway where they fought. Person A threw punches at him and he threw punches at Person A. He observed Person A bleeding, but he had no idea where the blood came from. Mena also observed the blood on Person A's head, but he tried to keep his distance from getting the blood on him.

Both Respondent and his partner, Campbell testified credibly before this Court. Respondent and Campbell who were similarly situated in stature testified that the two of them were unable to handcuff Person A who was resisting violently by kicking, punching and eventually reached for Campbell's firearm.

It was stipulated to by the parties that Person A stood at 5 feet 8 inches and 220 pounds. Both Respondent and Campbell testified that Person A appeared to be under the influence of some type of drug because nothing subdued him as he continued to resist during an estimated four minute exchange. They described him as having the strength of someone on PCP or angel dust. Both Respondent and his partner testified that they struggled with Person A while he was inside his vehicle and Respondent stood on the driver side struggling with him and his partner stood on the passenger side struggling with him. Eventually Person A fell out of the vehicle to the ground during the struggle. Person A finally fled on foot.

The Advocate also wants this Court to believe that Respondent, who admitted to pulling out his retractable ASP and striking Person A about the legs three times to get him to drop, also struck Person A about the head. Person A sustained two lacerations to either side of the head requiring 14 staples to close. The assumption must be that Respondent struck him at least twice on either side of the head. Yet, this alleged excessive force, (which is outside of Department guidelines) still did not result in Person A being subdued because he fled on foot at least a block into a building and up to the second floor. This view is not worthy of belief particularly since Person A who was supposedly beaten about both sides the head, was able to immediately engage in another brutal physical assault with additional police officers on the second floor landing of a building he ran at least a block to get to, as testified to by Clyburn and Mena.

Clyburn testified that he was working SNEU in the catch car when he heard the call for a "10-85" (officer needs assistance). He was five blocks away and responded to the Nelson Avenue location. He encountered Person A. He was able to get only one handcuff on him but then they fell to the floor in the struggle and began tussling on the floor. Clyburn said the struggle was brutal because both he and his partner were unable to handcuff Person A all while Person A struck him about the body and they exchanged punches to the face. Although Clyburn's partner, Mena, testified that Person A was bleeding down both sides of his head and he did not want to come in contact with him, he admitted that he tripped him so that he could fall to the ground in the stairwell where the encounter transpired so that he could place handcuffs on him. Both sets of police officers, including Respondent, acknowledged that Person A fell to the ground in the violent struggle.

Although medical records note Person A had a violent struggle with the police, he never states that he was hit in the head with a metal or other object by one of the officers. Medical records also note that Person A was under the influence of marijuana and hashish which may account for the brute strength he had during both exchanges with police officers. In addition, Respondent's ASP was tested and found not to contain any physical evidence.

Person A, on the other hand gave various, incredible accounts of what transpired. During his CCRB interview held on February 19, 2009 (DX 2), he stated that he was stopped by two police officers. He acknowledged that he was in a stolen car that he received from a "friend in the hood." He later stated that he had no idea at the time of the incident that the car was stolen. Person A stated that once stopped by the police, he exited his vehicle and immediately got to the floor when he was struck in the head with the ASP. This is clearly in contradiction to the account given by Respondent and Campbell. Person A also stated that he was struck about ten times in the head with the ASP. This account is incredible. Not only would Person A probably have been unconscious from the assault, but he certainly would not have been able to flee to the building and engage in another physical incident with additional police officers.

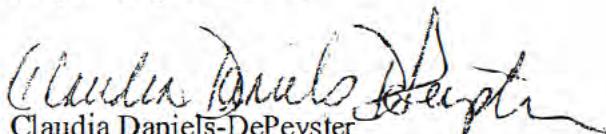
In his second CCRB interview held on February 25, 2009 (DX 3), Person A stated that he was standing with his hands up in the air when he was struck in the front of the head with a stick. He said he was struck three to four times before he voluntarily got down to the ground; and one to two times once on the ground. In addition, after he fled the first location and encountered additional police officers, he said he was punched in the head six to seven times. Not only is this second account inconsistent with the first

account, it is also not credible that he volunteered to do anything given the fact that he admitted to resisting during the second interview and was charged with resisting arrest for being in a stolen vehicle.

Given the fact that Person A had two, incredible accounts of what transpired as well as two, separate violent struggles with police officers which landed him on the ground in both instances, absent some corroborative evidence, this Court is unable to establish by a preponderance of the credible evidence that Respondent used force and struck Person A in the head with an ASP without police necessity.

Accordingly, Respondent is found Not Guilty.

Respectfully submitted,

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials

